

HOUSE BILL 1321

By West

AN ACT to amend Tennessee Code Annotated, Title 68,  
Chapter 105, Part 1, relative to blasting and  
explosive devices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 105, Part 1, is amended by  
adding a new section thereto, as follows:

Section 68-105-122.

(a)

(1) At least seventy-two (72) hours before blasting operations are conducted within one-half (1/2) mile distance of any dwelling house, public building, school, church, or commercial or institutional building, a blaster shall provide to each such dwelling house, public building, school, church, or commercial or institutional building a survey written in plain English noting in writing any cracks, fissures, separations or other such disturbances in such structures. If the blaster fails to provide a survey then any cracks, fissures, separations or other such disturbances in such structures shall be inferred to be the result of actions by the blaster. Such inference may be overturned by clear and convincing evidence to the contrary.

(2) The blaster shall take photographs of any cracks, fissures, separations, or other such disturbances in structures in subdivision (1). Written notations and photographs shall be acknowledged in writing by a person over the age of eighteen (18) who lives or works in a dwelling house, public building, school, church, or commercial or institutional building within the affected area. Copies of such written notations and photographs shall be provided upon request to the owner of any dwelling house, public building, school, church, or commercial or institutional building. Photographs shall be

identified by the date they were taken and the person who took the photograph. A person who lives or works in a dwelling house, public building, school, church, or commercial or institutional building within the affected area who does not complete a survey shall not be entitled to a rebuttable inference as provided in subsection (b).

(b) In any action against a blaster for damages to a dwelling house, public building, school, church, or commercial or institutional building there shall be a rebuttable inference that cracks, fissures, separations, or other such disturbances that do not appear in written notes or photographs signed by the owner of such property and that occur within six (6) months of blasting were the result of blasting. The provisions of this subsection shall apply only to dwelling houses, public buildings, schools, churches, or commercial or institutional buildings within one-half (1/2) mile distance of blasting operations.

SECTION 2. Tennessee Code Annotated, 68-105-103, is amended by adding the following as a new, appropriately designated subsection:

(m) Notice shall be given of any blasting activity within one-half (1/2) mile distance of any dwelling house, public building, school, church, or commercial or institutional building at least seventy-two (72) hours in advance of such blasting. The notice shall include the date, approximate time, and location of the blasting.

SECTION 3. Tennessee Code Annotated, 68-105-105(b), is amended by deleting the first sentence of subsection (b) in its entirety and by substituting instead the following:

Seismograph measurements must be used in every blasting operation, including individual blasting operations in which there is noncompliance with the standard table of distance.

SECTION 4. Tennessee Code Annotated, 68-105-107, is amended by adding the following new subsection thereto:

(d) All blasting records shall be filed with the department within one (1) business day of each blast. Within seventy-two (72) hours of receiving a request the department shall make available all blasting records to a person requesting such information.

SECTION 5. Tennessee Code Annotated, 68-105-118(a), is amended by adding the following as a new, appropriately designated subdivision:

(7) Has failed to respond to complaints filed with the department by persons who have suffered damages as a result of blasting activities;

SECTION 6. Tennessee Code Annotated, Title 68, Chapter 105, Part 1, is amended by adding the following as new, appropriately designated sections:

Section 68-105-12\_\_.

(a) The department shall develop uniform guidelines for persons to use in documenting damage resulting from blasting. These guidelines shall be non-binding. Failure to utilize the guidelines shall not be raised as a defense or otherwise used in any proceeding in which a person seeks compensation for damages for blasting.

(b) The department shall develop a procedure in which persons who have suffered damages as a result of blasting activities may file a complaint against a registered blaster with the department.

(c) The department shall develop a program in which entities regulated under this act can enter into prompt and fair settlements with persons who have suffered damages as a result of blasting activities.

Section 68-105-12\_\_. The commissioner is authorized to seek criminal history background checks pursuant to § 38-6-109 for persons prior to their becoming registered to use explosives. The commissioner is further authorized to require such persons to provide fingerprint samples to the Tennessee bureau of investigation and the federal

bureau of investigation for the purpose of conducting a criminal history background check.

Section 68-105-12\_\_.

(a) No person who has been ordered to cease blasting operations pursuant to § 68-105-109(b), or whose registration has been revoked or suspended pursuant to § 68-105-118, shall be permitted to continue blasting operations pending the outcome any appeals of such proceedings.

(b) No corporation, partnership or firm shall be issued a registration certificate if it employs any person who is a party to litigation involving blasting or whose handler's registration has been revoked or suspended.

SECTION 7. Tennessee Code Annotated, Section 68-105-110, is amended by deleting such section in its entirety and by substituting instead the following:

Section 68-105-110. A county, town, city or metropolitan government may adopt ordinances or resolutions that are the same as or more stringent than state law and regulations.

SECTION 8. The commissioner is directed to review blasting standards to ensure that particularly in areas with occupied dwellings and outbuildings maximum protection of persons and property is achieved. The commissioner shall report to the house and senate state and local government committees by February 1, 2008, of the appropriateness of present blasting standards.

SECTION 9. The commissioner shall promulgate by rule and regulation pursuant to title 4, chapter 5, civil penalties for violations of any provision of this act, including but not limited to, recordkeeping requirements, notice requirements, and blasting standards.

SECTION 10. The department shall promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 11. This act shall take effect July 1, 2007, the public welfare requiring it.